IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

And
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 1840 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 08/04/2004 in WP NO: 25199 OF 2003 on the file of the High Court.)

Between:

A.Viswanath S/o M.Arumugam
R/o 8-106, Nagireddypalli Village,
Nandalur Mandal, cuddapah District.

..... APPELLANT

AND

1 P.Jaya Laxmi W/o S.Naveen Babu
H.No.4-420, Koti Reddy street, Nagarajupeta, Kadapa
2 IBP. Company Limited (An India Oil Group Company)
Corporate office, IBP. HOuse 34-A, Nirmal Chandhra Street Kolkata,
reptd.by its General Manager,
3 The Divisional Manager IBP., Company Limited
10, Major U.R.Raghunathan Road, Chennai.
4 IBP. Company Limited (An India Oil Group Company)
business Group- Petroleum 9-1-83 and 84, Secunderabad
rep.by its Additional Divsional Manager.

.....RESPONDENTS

Counsel for the Appellant: MR.S.V.BHATT

Counsel for the Respondent No.: MR.G.VIDYASAGAR

Counsel for the respondent No: MR. DEEPAK BHATTACHARJEE

WRIT PETITION NO : 22011 of 2004

Between:

A. Viswanath, S/o M. Arumugam,
R/o 8-106, Nagireddypalle Village, Nandalur Mandal, Kadapa District.

..... PETITIONER

AND

1 IBP Company Limited (An Indian Oil Group Company)
Corporate Office,IBP House, 34-A,Nirmal Chandhra Street, Kolkata, rep. by its General Manager.
2 The Divisional Manager, IBP Company Limited
10,Major, U.R. Raghunathan Road, Chennai.
3 IBP Company Limited (An Indian Oil Group Company)
Business Group - Petroleum 9-1-83 and 84, Secunderabad,
Rep. by its Additional Divisional Manager.
4 P. Jayalakshmi, W/o S.Naveen Babu,
R/o D.No. 4-420, Kotireddy Street, Nagarajupeta, Kadapa.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, Order or Direction more particularly one in the nature of a Writ of Mandamus declaring the action of Respondent Nos. 1 to 3 in notifying and awarding L.P.G. Distributorship at Kodur, Kadapa District through Reference Kodur dated 11-6-2004 to 4th respondent herein as illegal, arbitrary and violative of Article 14 of Constitution of India and consequently declare that the Petitioner shall be appointed as L.P.G. Distributor ship at Kodur Mandal, Kadapa District (A.P)

Counsel for the Petitioner: MR.S.V.BHATT

Counsel for the Respondent Nos.: MR.DEEPAK BHATTACHARJEE
Counsel for the Respondent Nos. Mr. G. VIDYASAGAR

The Court, at the stage of admission, made the following:

ORAL COMMON ORDER: (PER: THE HON'BLE THE CHIEF JUSTICE)

A notification was issued to appoint distributor for LPG in the State of Andhra Pradesh on 02-04-2002 and Kodur mandal, Kadapa district, was one of such center. The appellant as well as 4th respondent in W.P.No. 22011 of 2004 applied for distributorship. Both of them satisfied the eligibility criteria. But the appellant, in order to conduct business of distributorship, included with him two other partners. They were co-applicants. Eligible candidates were called for interview. The appellant along with partners as well as 4th respondent in W.P.No. 22011 of 2004 were called for interview; and on 24-11-2003, the respondents short-listed the candidates. The name of the appellant was shown

on the top with 52% of marks; whereas the name of the 4th respondent in W.P.No. 22011 of 2004 was shown at serial No.2 with 51% of marks and the name of the 3rd applicant was shown at serial No.3 with 50% marks. Accordingly, the appellant was short-listed as the candidate. This action of the respondents in short-listing the

appellant was questioned by the 4th respondent by filing W.P.No.25199 of 2003. The 4th respondent alleged in the writ petition that appellant had joined the other two persons as partners and, therefore, while preparing the merit list, respondent Nos. 1 to 3 had not followed the practice, which hitherto has been followed by the department and that when application is by the partners, average or mean marks of the partners would be the final marks obtained by the partnership. In not following this practice, action of the respondent Nos. 1 to 3 was challenged by the 4th respondent as illegal, arbitrary and irrational.

The writ petition was contested by the appellant herein as well as respondent Nos. 1 to 3. Respondent Nos. 1 to 3 in their counter affidavit stated that as per the prevailing practice and procedure followed by the respondent Nos. 1 to 3, the marks secured by all the partners should have been taken into consideration for arriving at the average or mean and simultaneously they took a plea that the manual of instructions does not manifest the same and it only indicates that all the partners shall have to fulfill the eligibility criteria. Appellant also filed counter affidavit, but nowhere challenged the practice, which was being followed by the respondents 1 to 3 hitherto in drawing average or mean of the marks secured by the partners together.

Learned single Judge, after hearing the parties, allowed the W.P.No. 25199 of 2003 filed by the 4th respondent on the ground that once there was a certain practice being followed by the respondent Nos. 1 to 3, the deviation from the said practice necessarily had resulted in the injustice and, therefore, the action of the respondent Nos. 1 to 3 has to be termed as arbitrary, irrational and illegal and consequently directed the 1st respondent to place the matter before the Selection Committee for preparation of merit list in accordance with the accepted practice and further directed that on preparation of the merit list, respondents can proceed with the selection in accordance with law. Accordingly, the 4th respondent was selected and on 11-06-2004, a letter of intent was issued.

Questioning the order of the learned single Judge dated 08-04-2004, the writ appeal has been preferred by the appellant and separate W.P.No. 22011 of 2004 has been filed in selecting the 4th respondent.

We have heard the learned counsel for the appellant at length, who has tried to argue before us that he being a meritorious candidate, even if he had chosen to join

with him two other partners, there was nothing wrong in respondents choosing the appellant as per his own merit and it was impermissible to take average of the marks secured by each of the partners. He submits that each one of the partners fulfilled the requisite criteria or minimum qualifications. Therefore, in selection, each individual partner ought to have been taken as a separate entity and since the appellant had secured more marks than the 4th respondent, average of the marks obtained by the appellant and his two partners ought not to have been clubbed together to take out mean thereof.

Having duly considered the submission, we find no merit therein. It is the stand of the respondent Nos. 1 to 3 that in the absence of any rule or regulation on the point, the practice hitherto they have been following in the case of partners would be to take the mean or average of the marks secured by each of the partners. Such a practice being followed by the respondents, not being contrary to the rules or regulations, must be deemed to have acquired statutory force and the respondents would not have deviated from the settled practice. For that reason, we are of the view that there is no merit in the appeal and for the self-same reasons, writ petition also has no merit. Therefore, both the writ appeal and the writ petition are dismissed. No costs.

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DEVINDER GUPTA, CJ

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M. NARAYANA REDDY, J

Dt/ 03-12-2004

Pvks/vr

To

1 The General Manager, IBP Company Limited (An Indian Oil Group Company), Corporate Office, IBP House, 34-A, Nirmal Chandhra Street, Kolkata.
2 The Divisional Manager, IBP Company Limited
10,Major, U.R. Raghunathan Road, Chennai.
3. The Additional Divisional Manager, IBP Company Limited (An Indian Oil Group Company), Business Group - Petroleum 9-1-83 and 84, Secunderabad,

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